

# Safeguarding the Future of Pastoralism

A few weeks ago I was pleased to act as promoter for Monica Lengoiboni when she defended her PhD thesis on pastoralist seasonal land rights in land administration. This thesis addresses an issue that has worried me for some time, namely the marginalisation of nomadic pastoralist people. There may of course be many reasons for such, but one definitely concerns the way in which governments deal with allocation of land rights. Dr Lengoiboni's thesis gives clear evidence that this is indeed the case, at least in her research area of northern Kenya. Although after 1963 the policy of the post-colonial government was to concentrate pastoralism within dedicated group ranches, pastoralists continued their decade-long practice of seasonal migration. New policy does not change such behaviour.

These migratory patterns constitute a customary right based on long traditions and social recognition. From a legal point of view, this poses a huge problem today, as both in migration corridors and in grazing areas nomadic peoples face fences and other barricades erected by private landholders who possess private land rights assigned and allocated by governmental authorities. Wildlife parks and forests also pose serious obstacles. When it comes to registration and related legal protection, private rights are registered whereas the customary rights of pastoralists are not.

The fact that the law dictates exclusivity for registered private rights weakens the legal position of pastoralists. What is their response? They start negotiations with private landholders about access to their land and what they, the pastoralists, should pay for this. Private land is also encroached upon, resulting in serious conflicts. A thesis is of course a work of science; however, translating it into real-life politics reveals to me how amiss things have gone historically with initial registration and later updating of land rights.

The process applied here is called 'land adjudication'. Land adjudication aims at making an inventory of all holders of rights to land before registration takes place. This is a very serious activity, as practice shows that often right-holders are forgotten, depriving secondary land-rights holders from their rights, often to the detriment of, for example, vulnerable groups and women. In the study area in northern Kenya private land rights have been registered but customary rights for seasonal migration ignored, effectively depriving pastoralists of them.

As the Kenyan government states in its land policy (2007) that they 'want to allow the pastoral communities to maintain their unique land use system', the appropriate action is to provide pastoralist communities with legal land rights, giving them equal status with those held by private right-holders. I would say that this was completely in line with the reports of the High Commission for Empowerment for the Poor. Where this empowerment conflicts with the interest of private right-holders, the government should find a solution, providing pastoralist spatio-temporal land rights to state or private land, perhaps after partial expropriation.